

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CHARLES T. PHILLIPS,

Plaintiff,

V.

ALBERTO GONZALEZ, *et al.*,

Defendants.

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Case No. 2:09-cv-652-IPJ-TMP

MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on September 1, 2009, recommending that this action be dismissed for failing to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1). The plaintiff filed written objections on September 24, 2009. In his objections, the plaintiff argues that he has a due process right to have his claim *investigated* by law enforcement authorities. However, the decision to investigate or prosecute government officers or officials is within the discretion of the United States Attorney and is not subject to interference by the court. *See Inmates of Attica Correctional Facility v. Rockefeller*, 477 F.2d 375 (2nd Cir. 1973); *Otero v. U.S. Atty. Gen.*, 832 F.2d 141 (11th Cir. 1987). Additionally, a private citizen has no “judicially cognizable interest in the prosecution or non-prosecution of another.” *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

Therefore, having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the Court is of the opinion that the magistrate judge's report is due to be and hereby is ADOPTED and the recommendation is ACCEPTED. Accordingly, this action is due to be dismissed for failing to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1). A Final Judgment will be entered.

DATED this 29th day of September 2009.

A handwritten signature in dark ink, appearing to read "Inge Prytz Johnson", is written over a horizontal line.

INGE PRYTZ JOHNSON
U.S. DISTRICT JUDGE